

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERRY EZELL,

Plaintiff,

v.

SHAWNA MCCANN,

Defendant.

Case No. C23-729RSM

MINUTE ORDER

The following MINUTE ORDER is made by direction of the Court, the Honorable Ricardo S. Martinez, United States District Judge: This case was originally opened on May 15, 2023. Dkt. #1. A notice of filing deficiency was mailed to Plaintiff Terry Ezell on May 17, 2023, informing him that the filing fee was not paid, the civil cover sheet was omitted, and that the proposed complaint lacked signatures from several Plaintiffs. Dkt. #4. Mr. Ezell later paid the filing fee and filed a civil cover sheet. The Court never received signatures from the other Plaintiffs, and they have been terminated as plaintiffs of record in this case.

On June 2, 2023, the Court mailed a blank summons to Mr. Ezell, to be served by him on Defendant Shawna McCann, along with a letter and instructions. Dkt. #5. The letter states “[y]ou

1 are responsible for serving the Summons and a copy of the Complaint on the defendant in your
2 case.” Dkt. #5-1. The instructions state, in part:

3 After you file your lawsuit, you must serve your papers on the other
4 side, which means making sure they receive copies. Until the other
5 side receives the papers in a way that the law says is valid, they are
6 not a party to the lawsuit, and the case has not really begun. You
7 must give the other parties to your lawsuit a copy of every paper that
8 you file with the Court. This is called “serving” the other parties.
9 Serving your papers is critical. If you do not serve your papers on
10 the other parties in exactly the way required by law, it is as if you
11 never filed those papers at all.

12

13 The rules for serving the original complaint are different from the
14 rules for serving other papers, and must be followed exactly. If the
15 complaint is not properly served on the other parties, the case will
16 not proceed. Rule 4 of the Federal Rules of Civil Procedure lays out
17 the requirements for serving the original complaint.

18

19 If you do not serve your complaint and summons within 120 days
20 of the day you filed the complaint, the Court may dismiss your case.

21 Dkt. #5-2 at 1. The Court advises Mr. Ezell to carefully re-read all the instructions as well as
22 Rule 4 before serving Defendant McCann.

23 The Court has received no indication that Defendant McCann was properly served. She
24 has not appeared in this action.

25 On August 21, 2023, Mr. Ezell filed a Motion for Summary Judgment. Dkt. #11. On
26 August 31, 2023, Mr. Ezell filed an Amended Motion for Summary Judgment without
27 withdrawing his prior Motion. Dkt. #13. Both Motions are unsigned and fail to indicate they
28 were served on Defendant McCann, who has not appeared in this case and is not receiving copies
of materials added to the docket. Federal Rule of Civil Procedure 11(a) requires Motions to be
signed by the Plaintiff or his attorney. Federal Rule of Civil Procedure 5 requires Motions to be

1 served on the opposing party. The Court has no indication that Mr. Ezell has served these
2 Motions on Defendant McCann, or that she is aware that this case exists.

3 Given all of the above, the Court STRIKES both Motions for Summary Judgment, Dkts.
4 #11 and #13, as procedurally improper and premature. Such motions are properly filed after a
5 defendant has appeared and responded to the complaint. Plaintiff has until September 12, 2023,
6 to serve Defendant McCann with a copy of the complaint and summons as instructed above. If
7 Plaintiff does not file timely proof of service with the Court this case will be dismissed.
8

9
10 DATED this 1st day of September, 2023.

11 RAVI SUBRAMANIAN, Clerk

12
13 By: /s/ Serge Bodnarchuk
14 Deputy Clerk
15
16
17
18
19
20
21
22
23
24
25
26
27
28